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Seattle, WA 98101			1761	

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/724,287

Applicant(s)

GARWOOD, ANTHONY J.M.

Examiner

Drew E Becker

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 September 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 360-373, 422-442, 445-470, 472-476, 478-483 and 488-495 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 360-373, 422-442, 445-470, 472-476, 478-483 and 488-495 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 360-373, 422-442, 445-470, 472-476, 478-483 and 488-495 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-37 of copending Application No.

10/320,863 in view of Groves et al. It would have been obvious to one of ordinary skill in the art to incorporate fat based blending of Groves et al since this would have provided a properly balanced meat product.

This is a provisional obviousness-type double patenting rejection.

3. Claims 360-373, 422-442, 445-470, 472-476, 478-483 and 488-495 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 44-59 of copending Application No.

10/368,933 in view of Groves et al. It would have been obvious to one of ordinary skill in

Art Unit: 1761

the art to incorporate fat based blending of Groves et al since this would have provided a properly balanced meat product.

This is a provisional obviousness-type double patenting rejection.

4. Claims 360-373, 422-442, 445-470, 472-476, 478-483 and 488-495 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-21 of copending Application No. 10/369,079 in view of Wiley. It would have been obvious to one of ordinary skill in the art to incorporate the packaging techniques of Wiley since this would have better preserved the meat product.

This is a provisional obviousness-type double patenting rejection.

5. Claims 360-373, 422-442, 445-470, 472-476, 478-483 and 488-495 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-42 of copending Application No. 10/384,853 in view of Groves et al. It would have been obvious to one of ordinary skill in the art to incorporate fat based blending of Groves et al since this would have provided a properly balanced meat product.

This is a provisional obviousness-type double patenting rejection.

6. Claims 360-373, 422-442, 445-470, 472-476, 478-483 and 488-495 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-12 of copending Application No. 10/385,264 in view of Groves et al. It would have been obvious to one of ordinary skill in

Art Unit: 1761

the art to incorporate fat based blending of Groves et al since this would have provided a properly balanced meat product.

This is a provisional obviousness-type double patenting rejection.

7. Claims 360-373, 422-442, 445-470, 472-476, 478-483 and 488-495 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-49 of copending Application No. 10/413,073 in view of Wiley. It would have been obvious to one of ordinary skill in the art to incorporate the packaging techniques of Wiley since this would have better preserved the meat product.

This is a provisional obviousness-type double patenting rejection.

8. Claims 360-373, 422-442, 445-470, 472-476, 478-483 and 488-495 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 21-35 of copending Application No. 10/418,558 in view of Groves et al. It would have been obvious to one of ordinary skill in the art to incorporate fat based blending of Groves et al since this would have provided a properly balanced meat product.

This is a provisional obviousness-type double patenting rejection.

9. Claims 360-373, 422-442, 445-470, 472-476, 478-483 and 488-495 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-46 of copending Application No. 10/440,460 in view of Wiley. It would have been obvious to one of ordinary skill in the

Art Unit: 1761

art to incorporate the packaging techniques of Wiley since this would have better preserved the meat product.

This is a provisional obviousness-type double patenting rejection.

Claim Rejections - 35 USC § 112

10. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

11. Claims 360-365, 367-368, 422-427, 440, 445-446, 463, 472, and 478-479 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

12. Claim 360 recites "introducing a gas into the packages at a positive pressure to dissolve some of the gases therein, wherein the gas comprises carbon dioxide and carbon monoxide". It is not clear how a gas can dissolve itself. It is not clear whether other gases are present, if so, it is not clear which gas is being referred to by "the gas".

13. Claim 360 recites "substantial inward deformation". It is not clear what level of deformation is considered "substantial".

14. Claim 367 recites the limitation "the sealed web". There is insufficient antecedent basis for this limitation in the claim.

15. Claim 368 recites the limitation "the bacteria". There is insufficient antecedent basis for this limitation in the claim.

Art Unit: 1761

16. Claim 422 recites "wherein the individual packages occupy less than 50% of the volume of the barrier container". It is not clear the individual packages each occupy less than 50%, or whether the individual packages as a group occupy less than 50%.

17. Claim 427 recites the limitation "the gas". There is insufficient antecedent basis for this limitation in the claim.

18. Claim 440 recites the limitation "the information". There is insufficient antecedent basis for this limitation in the claim.

19. Claim 479 recites the limitation "the gas". There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

20. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

21. Claims 430-432 are rejected under 35 U.S.C. 102(b) as being anticipated by DE 2242865A.

Art Unit: 1761

DE 2242865A teaches a method including combining quantities of sausage meat in a meat mincer while adding a measured amount of carbon dioxide and water, the amount of water inherently being related to the amount of carbon dioxide, automatically controlling mincing and water addition, and the mincer being an enclosed conduit (abstract; Figure 1).

Claim Rejections - 35 USC § 103

22. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

23. Claims 369, 373, 428, 441-442, 447-450, 462, 466, 468, 480 are rejected under 35 U.S.C. 103(a) as being unpatentable over Groves et al in view of DE 2242865A and Montanari et al [Pat. No. 5,478,990].

Groves et al teach a method for producing meat by providing two streams of meat with fat, measuring the fat content of the streams, blending the streams in a vessel with gas, a printing station for information such as fat content and batch number related to the animal from which it was harvested (column 4, line 66 to 5, line 20), and conduits (Figure 1, #53-56). Groves et al do not teach treating with an agent comprising water, determining water content, packaging, testing for E. coli, and applying animal info. DE 2242865A teaches a method of making a food product by mincing meat while adding carbon dioxide and water, as well as measuring the water content (abstract). Montanari

Art Unit: 1761

et al teach a method of making food by packaging meat (column 14, line 47) testing for pathogens (column 12, line 30), and applying information to the meat product (column 16, lines 20-28). It would have been obvious to one of ordinary skill in the art to incorporate the water and carbon dioxide of DE 2242865A into the invention of Groves et al since both are directed to methods of processing meat, since Groves et al already included grinding and measuring the meat (Figure 1, #12-13 & 15), and since the water and carbon dioxide of DE 2242865A would have helped control microbial growth in addition to preventing the meat from becoming too dry. It would have been obvious to one of ordinary skill in the art to incorporate the labeling of Montanari et al into the invention of Groves et al, in view of DE 2242865A, since all are directed to methods of processing meat, since Groves et al already included ground meat which would have required some packaging means, and since the tracking labels of Montanari et al would have efficiently provided a means of tracking the meat back to its origin in case of contamination, or other problems.

24. Claims 370-372 are rejected under 35 U.S.C. 103(a) as being unpatentable over Groves et al, in view of DE 2242865A and Montanari et al, as applied above, and further in view of Inglis et al.

Groves et al, DE 2242865A, and Montanari et al teach the above mentioned concepts. Groves et al, DE 2242865A, and Montanari et al do not recite the use of carbonic acid. Inglis et al teach a method of treating meat by applying a bacteria reducing agent in the form of carbonic acid (column 4, line 50), exposing the meat to carbon dioxide (column 7, line 41), determining the water content and adding the proper amount (column 4, line

Art Unit: 1761

10), the use of sealed, case-ready barrier packages (column 3, line 53), and the removal of oxygen and use of a modified atmosphere in the barrier package (column 1, lines 10-18). It would have been obvious to one of ordinary skill in the art to incorporate the carbonic acid of Inglis et al into the invention of Groves et al since both are directed to methods of processing meat, since Groves et al used raw meat which often included bacteria, since Groves et al would have required some means to package the blended raw meat, and since the carbonic acid of Inglis et al would have reduced the amount of bacteria without negatively impacting the taste of the meat (column 3, line 25-28).

25. Claims 422-423, 425-426, 461, 465, and 481 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cheng in view of Shaklai [Pat. No. 6,270,829].

Cheng teaches a method of processing meat by placing meat in a container, placing that container within a barrier package which is oxygen impermeable, the individual packages each occupying less than 50% of the container volume (Figure 1), and sealing it with as little as 2% oxygen and the remainder of carbon dioxide and nitrogen (column 8, lines 10-70). Cheng does not teach the use of carbon monoxide. Shaklai teaches a method of packaging meat with carbon monoxide (abstract). It would have been obvious to one of ordinary skill in the art to incorporate the carbon monoxide of Shaklai into the invention of Cheng since both are directed to methods of processing and packaging meat, since Cheng already included a modified atmosphere package (column 8, lines 10-70), and since Shaklai teaches that carbon monoxide maintained the color and freshness of the meat while also retarding bacterial growth (abstract).

Art Unit: 1761

26. Claim 424 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cheng, in view of Shaklai, as applied above, and further in view of Goldsmith.

Cheng and Shaklai teach the above mentioned concepts. Cheng and Shaklai do not recite testing. Goldsmith teaches a method of packaging meats by testing the packaged meat for bacteria, such as E. coli (abstract; column 1, line 44). It would have been obvious to one of ordinary skill in the art to incorporate the testing of Goldsmith into the invention of Cheng since both are directed to methods of processing and packaging meat, since Cheng made use of raw meat which often contained bacteria, since meat contaminated with bacteria often caused illness in the consumer, and since the testing of Goldsmith would have provided an effective means to determine whether the packaged meat was contaminated with bacteria (abstract).

27. Claim 429 and 467 are rejected under 35 U.S.C. 103(a) as being unpatentable over Groves et al, in view of DE 2242865A and Montanari et al, as applied above, and further in view of Shaklai.

Groves et al, DE 2242865A, and Montanari et al teach the above mentioned concepts. Groves et al, DE 2242865A, and Montanari et al do not recite the use of carbon monoxide. Shaklai teaches a method of packaging meat with carbon monoxide (abstract). It would have been obvious to one of ordinary skill in the art to incorporate the carbon monoxide of Shaklai into the invention of Groves et al, in view of DE 2242865A and Montanari et al, since all are directed to methods of processing and packaging meat, since Montanari et al already included a package (column 14, line 48),

Art Unit: 1761

and since Shaklai teaches that carbon monoxide maintained the color and freshness of the meat while also retarding bacterial growth (abstract).

28. Claims 433-434 and 437 are rejected under 35 U.S.C. 103(a) as being unpatentable over DE 2242865A as applied above, and further in view of Goldsmith. DE 2242865A teaches the above mentioned concepts. DE 2242865A does not recite testing. Goldsmith teaches a method of packaging meats by testing the packaged meat for bacteria, such as E. coli (abstract; column 1, line 44). It would have been obvious to one of ordinary skill in the art to incorporate the testing of Goldsmith into the invention of DE 2242865A since both are directed to methods of processing and packaging meat, since DE 2242865A made use of raw meat which often contained bacteria, since meat contaminated with bacteria often caused illness in the consumer, and since the testing of Goldsmith would have provided an effective means to determine whether the packaged meat was contaminated with bacteria (abstract).

29. Claims 435-436 are rejected under 35 U.S.C. 103(a) as being unpatentable over DE 2242865A, in view of Goldsmith, as applied above, and further in view of Shaklai. DE 2242865A and Goldsmith teach the above mentioned concepts. DE 2242865A and Goldsmith do not recite the use of carbon monoxide. Shaklai teaches a method of packaging meat with carbon monoxide (abstract). It would have been obvious to one of ordinary skill in the art to incorporate the carbon monoxide of Shaklai into the invention of DE 2242865A, in view of Goldsmith, since all are directed to methods of processing and packaging meat, since Goldsmith already included a package (Figure 1), and since

Art Unit: 1761

Shaklai teaches that carbon monoxide maintained the color and freshness of the meat while also retarding bacterial growth (abstract).

30. Claims 438-439 and 482-483 are rejected under 35 U.S.C. 103(a) as being unpatentable over Groves et al in view of Cheng and Joshi et al [Pat. No. 6,407,555]. Groves et al teach a method for producing meat by providing two streams of meat with fat, measuring the content of the streams, blending the streams in a vessel with gas, a printing station for information such as fat content and batch number related to the animal from which it was harvested (column 4, line 66 to 5, line 20), and conduits (Figure 1, #53-56). Groves et al do not teach the use of less than 5% oxygen or measuring the water content. Cheng teaches a method of processing meat with as little as 2% oxygen (column 8, lines 10-70). Joshi et al teach a method of measuring the water content of meat (abstract; 4, line 55). It would have been obvious to one of ordinary skill in the art to incorporate the 2% oxygen of Cheng into the invention of Groves et al since both are directed to methods of processing meat, since gases were commonly used during meat grinding in order to preserve the meat, since a total lack of oxygen would have turned the meat purple, and since the limited amount of oxygen taught by Cheng would have prevented the undesirable purple color from developing. It would have been obvious to one of ordinary skill in the art to incorporate the water measurement of Joshi et al into the invention of Groves et al, in view of Cheng, since all are directed to methods of treating meat, since Groves et al already included measurement of characteristics such as fat content (column 3, lines 3-19), since lean meat possessed a high moisture content as disclosed by Groves et al (column 1, line

Art Unit: 1761

21), since Joshi et al teach that the water content of meat was easily measured (abstract), and since measuring the water content of the meat in Groves et al would have further ensured the proper blending of lean and fat meat portions.

31. Claims 453-454 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cheng, in view of Shaklai, as applied above, and further in view of Montanari et al. Cheng and Shaklai teach the above mentioned concepts. Cheng and Shaklai do not recite information related to water content. Montanari et al teach a method of packaging meat by labeling the package with information (column 14, line 45). It would have been obvious to one of ordinary skill in the art to label the water content since Cheng already included packaging, and since the labels of Montanari et al would have provided an effective means of conveying information related to the package contents, and since the water content was commonly applied to food labels.

32. Claims 455-456 are rejected under 35 U.S.C. 103(a) as being unpatentable over DE 2242865A, in view of Goldsmith, as applied above, and further in view of Montanari et al.

DE 2242865A and Goldsmith teach the above mentioned concepts. DE 2242865A and Goldsmith do not recite information related to water content. Montanari et al teach a method of packaging meat by labeling the package with information (column 14, line 45). It would have been obvious to one of ordinary skill in the art to label the water content since Goldsmith already included packaging, and since the labels of Montanari et al would have provided an effective means of conveying information related to the package contents, and since the water content was commonly applied to food labels.

Art Unit: 1761

33. Claims 457-460 are rejected under 35 U.S.C. 103(a) as being unpatentable over Groves et al, in view of Cheng, as applied above, and further in view of Montanari et al. Groves et al and Cheng teach the above mentioned concepts. Groves et al and Cheng do not recite information related to water content. Montanari et al teach a method of packaging meat by labeling the package with information (column 14, line 45). It would have been obvious to one of ordinary skill in the art to label the water content since Cheng already included packaging, and since the labels of Montanari et al would have provided an effective means of conveying information related to the package contents, and since the water content was commonly applied to food labels.

34. Claim 469-470 is rejected under 35 U.S.C. 103(a) as being unpatentable over Groves et al, in view of Cheng and Joshi et al, as applied above, and further in view of Zarotschenzeff [Pat. No. 2,065,358].

Groves et al, Cheng, and Joshi et al teach the above mentioned concepts. Groves et al and Cheng do not recite controlling the water content. Zarotschenzeff teach a method of making a meat product by controlling the water content (column 1, lines 1-35). It would have been obvious to one of ordinary skill in the art to incorporate the water adjustment of Zarotschenzeff into the invention of Groves et al, in view of Cheng and Joshi et al, since all are directed to methods of processing meat, since Groves et al already included blending of lean and fat meats (column 3, line 2-19), since Groves et al disclose that lean meats have a higher water content (column 1, line 20), and since the water adjustment of Zarotschenzeff would have provided a more desirable meat product by better controlling its water content.

Art Unit: 1761

35. Claims 474-475 are rejected under 35 U.S.C. 103(a) as being unpatentable over Groves et al, in view of DE 2242865A and Montanari et al, as applied above, and further in view of Zarotschenzeff.

Groves et al, DE 2242865A, and Montanari et al teach the above mentioned concepts. Groves et al, DE 2242865A, and Montanari et al do not recite controlling the water content. Zarotschenzeff teaches a method of making a meat product by controlling the water content (column 1, lines 1-35). It would have been obvious to one of ordinary skill in the art to incorporate the water adjustment of Zarotschenzeff into the invention of Groves et al, in view of DE 2242865A and Montanari et al, since all are directed to methods of processing meat, since Groves et al already included blending of lean and fat meats (column 3, line 2-19), since Groves et al disclose that lean meats have a higher water content (column 1, line 20), and since the water adjustment of Zarotschenzeff would have provided a more desirable meat product by better controlling its water content.

36. Claim 476 is rejected under 35 U.S.C. 103(a) as being unpatentable over Groves et al, in view of DE 2242865A, Montanari et al, and Shaklai, as applied above, and further in view of Zarotschenzeff.

Groves et al, DE 2242865A, and Montanari et al teach the above mentioned concepts. Groves et al, DE 2242865A, and Montanari et al do not recite controlling the water content. Zarotschenzeff teaches a method of making a meat product by controlling the water content (column 1, lines 1-35). It would have been obvious to one of ordinary skill in the art to incorporate the water adjustment of Zarotschenzeff into the invention of

Art Unit: 1761

Groves et al, in view of DE 2242865A, Montanari et al, and Shaklai, since all are directed to methods of processing meat, since Groves et al already included blending of lean and fat meats (column 3, line 2-19), since Groves et al disclose that lean meats have a higher water content (column 1, line 20), and since the water adjustment of Zarotschenzeff would have provided a more desirable meat product by better controlling its water content.

37. Claims 366-368, 427, 464, 479 and are rejected under 35 U.S.C. 103(a) as being unpatentable over SU 621335A in view of Hirsch [Pat. No. 6,033,701].

SU 621335A teaches a method of grinding meat while exposing it to an atmosphere consisting of CO₂ at 88-118 psi (abstract) and the CO₂ inherently affecting E. coli. SU 621335A does not recite exposing it to CO₂ at greater than 300 psi after grinding. Hirsch teaches a method of preserving meat by storing it in air, which inherently included CO₂, at a pressure of 10,000 psi (column 12, lines 52 & 64). It would have been obvious to one of ordinary skill in the art to incorporate the pressure preservation of Hirsch into the invention of SU 321335A since both are directed to methods of treating meat, since SU 321335A already used gas at an elevated pressure (abstract), and since the pressure treatment of Hirsch would have effectively preserved the meat until it was ready to be consumed.

38. Claims 440, 451-452, and 492 are rejected under 35 U.S.C. 103(a) as being unpatentable over SU 621335A, in view of Hirsch, as applied above, and further in view of Montanari et al.

Art Unit: 1761

SU 621335A and Hirsch teach the above mentioned concepts. SU 621335A and Hirsch do not recite information relating the animal. Montanari et al teach a method of making food by packaging meat (column 14, line 47) testing for pathogens (column 12, line 30), and applying information to the meat product relating to the animal (column 16, lines 20-28). It would have been obvious to one of ordinary skill in the art to incorporate the labeling of Montanari et al into the invention of SU 621335A, in view of Hirsch, since all are directed to methods of processing meat, since SU 621335A would have required a means for packaging the meat, and since the tracking labels of Montanari et al would have efficiently provided a means of tracking the meat back to its origin in case of contamination, or other problems.

39. Claim 473 is rejected under 35 U.S.C. 103(a) as being unpatentable over SU 621335A, in view of Hirsch, as applied above, and further in view of Zarotschenzeff.

SU 621335A and Hirsch teach the above mentioned concepts. SU 621335A and Hirsch do not recite controlling the water content. Zarotschenzeff teaches a method of making a meat product by controlling the water content (column 1, lines 1-35). It would have been obvious to one of ordinary skill in the art to incorporate the water adjustment of Zarotschenzeff into the invention of SU 621335A, in view of Hirsch, since all are directed to methods of processing meat, since SU 621335A was concerned with improving the quality of the meat (abstract), and since the water adjustment of Zarotschenzeff would have provided a more desirable meat product by better controlling its water content.

Art Unit: 1761

40. Claims 488-489 are rejected under 35 U.S.C. 103(a) as being unpatentable over SU 621335A, in view of Hirsch, as applied above, and further in view of Cheng.

SU 621335A and Hirsch teach the above mentioned concepts. SU 621335A and Hirsch do not recite sealing the meat in an O₂ impermeable web with an O₂ content lower than air. Cheng teaches a method of processing meat by placing meat in a container, placing that container within a barrier package which is oxygen impermeable and sealing it with as little as 2% oxygen and the remainder of carbon dioxide and nitrogen (column 8, lines 10-70). It would have been obvious to one of ordinary skill in the art to incorporate the packaging of Cheng into the invention of SU 621335A, in view of Hirsch, since all are directed to methods of processing meat, since SU 621335A would have required a means for packaging the meat, and since the packaging of Cheng would have better preserved the meat.

41. Claim 490 is rejected under 35 U.S.C. 103(a) as being unpatentable over SU 621335A, in view of Hirsch and Cheng, as applied above, and further in view of Goldsmith.

SU 621335A, Hirsch, and Cheng teach the above mentioned concepts. SU 621335A, Hirsch, and Cheng do not recite testing for bacteria. Goldsmith teaches a method of packaging meats by testing the packaged meat for bacteria, such as E. coli (abstract; column 1, line 44). It would have been obvious to one of ordinary skill in the art to incorporate the testing of Goldsmith into the invention of SU 621335A, in view of Hirsch and Cheng, since all are directed to methods of processing meat, since SU 621335A made use of raw meat which often contained bacteria, since meat contaminated with

Art Unit: 1761

bacteria often caused illness in the consumer, and since the testing of Goldsmith would have provided an effective means to determine whether the packaged meat was contaminated with bacteria (abstract).

42. Claim 491 is rejected under 35 U.S.C. 103(a) as being unpatentable over SU 621335A, in view of Hirsch, Cheng, and Goldsmith, as applied above, and further in view of Montanari et al.

SU 621335A, Hirsch, Cheng, and Goldsmith teach the above mentioned concepts. SU 621335A, Hirsch, Cheng, and Goldsmith do not recite applying indicia to the web.

Montanari et al teach a method of making food by packaging meat (column 14, line 47) testing for pathogens (column 12, line 30), and applying information to the meat product (column 16, lines 20-28). It would have been obvious to one of ordinary skill in the art to incorporate the labeling of Montanari et al into the invention of SU 621335A, in view of Hirsch, Cheng, and Goldsmith, since all are directed to methods of processing meat, since SU 621335A already included ground meat which would have required some packaging means, and since the tracking labels of Montanari et al would have efficiently provided a means of tracking the meat back to its origin in case of contamination, or other problems.

43. Claim 493 is rejected under 35 U.S.C. 103(a) as being unpatentable over DE 2242865A as applied above, in view of McFarland [Pat. No. 3,992,985].

DE 2242865A teaches the above mentioned concepts. DE 2242865A does not recite the exclusion of oxygen. McFarland teaches a method grinding meat in an atmosphere of carbon dioxide (column 3, line 16). It would have been obvious to one of ordinary skill

Art Unit: 1761

in the art to incorporate the atmosphere of McFarland into the invention of DE 2242865A since both are directed to methods of grinding meat, since DE 2242865A already included carbon dioxide (abstract), and since the carbon dioxide atmosphere of McFarland better preserved the meat during processing.

44. Claims 494-495 are rejected under 35 U.S.C. 103(a) as being unpatentable over Groves et al, in view of Cheng and Joshi et al, as applied above, and further in view of McFarland.

Groves et al, Cheng, and Joshi et al teach the above mentioned concepts. Groves et al, Cheng, and Joshi et al do not recite the exclusion of oxygen. McFarland teaches a method grinding meat in an atmosphere of carbon dioxide (column 3, line 16). It would have been obvious to one of ordinary skill in the art to incorporate the atmosphere of McFarland into the invention of Groves et al, in view of Cheng and Joshi et al, since all are directed to methods of processing meat, since groves et al already included grinding the meat, and since the carbon dioxide atmosphere of McFarland better preserved the meat during processing.

Response to Arguments

45. Applicant's arguments with respect to claims 360-373, 422-442, 445-470, 472-476, 478-483 and 488-495 have been considered but are moot in view of the new ground(s) of rejection.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by

Art Unit: 1761

combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992).

The test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Conclusion

46. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

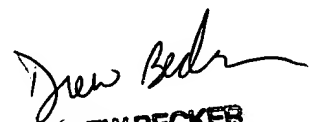
Art Unit: 1761

TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Drew E Becker whose telephone number is 571-272-1396. The examiner can normally be reached on Mon.-Thur. 8am-6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


DREW BECKER
PRIMARY EXAMINER
12-10-04